

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Improving Public Safety Communications	)	
in the 800 MHz Band	)	
	)	WT Docket No. 02-55
Consolidating the 900 MHz Industrial/Land	)	
Transportation and Business Pool Channels	)	
_____	)	

FURTHER COMMENTS OF EAST BAY MUNICIPAL UTILITY DISTRICT

East Bay Municipal Utility District (interchangeably “EBMUD” or “District”), through counsel, pursuant to Section 1.415 of the Commission’s rules, 47 C.F.R. §1.415, and in furtherance of the Commission’s Notice of September 6, 2002, DA 02-2202, hereby files its Comments on the “Consensus Plan” proffered to the Commission on August 7, 2002.

1. The Established Interest of EBMUD

The District previously set out its interest in this proceeding and, in doing so, has noted it is a publicly owned utility providing potable water services to 1.3 million customers located throughout its 325 sq. mile service area. EBMUD also represented it owns and operates an extensive communications network, which is an integral part of its water operations network, including 800 MHz facilities, and greatly relies on its FCC licensed facilities in the discharge of its statutory duties.<sup>1</sup>

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<sup>1</sup> See Reply Comments at pp 1-2.

More specifically, EBMUD holds eight conventional licenses in the 800 MHz band, which permit operation on multiple frequencies in the general category pool,<sup>2</sup> and has constructed more than 33 base and repeater facilities to hand-off 800 MHz traffic that supports more than 500 mobile units now operating 24/7 on the District's network.

The District's 800 MHz system is a "voting system",<sup>3</sup> and ties in directly with its microwave grid, which is comprised of 13 separately licensed microwave sites located throughout its service area. These interfaced systems are designed to have traffic converge at a central control point in order to transit to or from the District's hub, located at its Oakland, CA headquarters.

As the District further explained, its FCC licensed facilities are fundamental to its operational network (or OpNet) system, and they presently operate at or near fully-loaded capacities. Recognizing the need to expand capacity and increase efficiency, EBMUD's Board authorized its staff to undertake a project to upgrade its microwave system, although the matter is proceeding at a pace slower than either projected or anticipated.<sup>4</sup>

In sum, EBMUD has shown its active use of its 800 MHz facilities in the discharge of its statutory duties, and that these facilities are an integral part of its overall operational network. In addition, it has exhibited an awareness of and is continuing to show its commitment to maximizing spectrum efficiency.

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<sup>2</sup> *Id* at 3.

<sup>3</sup> The District's Voting System channelizes each repeater for the purpose of enhancing redundancy and interoperability (and the architecture allocates three voting systems for four of the five repeaters, with each voting system providing channels 1-3 for the assigned repeater).

## 2. Prior Concerns Not Addressed Under The Consensus Proposal

EBMUD previously outlined some of its concerns occasioned by the possibility of a Band Realignment, and urged the Commission to fully consider the following as a part of its deliberations: (i) critical infrastructure industry (CII) providers are also regarded as essential to the national defense, economic prosperity and quality of life; (ii) decisions involving CII providers – particularly those subject to the public planning process – are subject to long range budgetary processes and procedures; and (iii) the Commission should continue to maximize flexibility in the use of licenses while, at the same time, avoid unnecessary and/or duplicative costs.

It was based on these concerns EBMUD urged the Commission to consider less drastic options in advance of mandating wholesale rebanding, such as requiring licensees to adhere to the *Best Practices*, and/or to employ market based solutions for intermodulation and out-of-band emissions. Further, EBMUD suggested that any mandatory relocation should be undertaken cautiously, and only after a program is in place that addresses all relevant issues as part of a long term solution. A reading of the “Consensus” (Compromise) plan has not caused EBMUD to alter its position.

While it is true the Compromise plan no longer requires wholesale rebanding, it continues to require significant relocation – a relocation process that will affect EBMUD. To accomplish what in its most charitable light will be a highly involved process, the joint parties propose holding a series of meetings to develop step-by-step plans for

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<sup>4</sup> While the \$4.5 million project is proceeding at a pace slower than expected, considerable expense has nonetheless been incurred, and it is unclear how changes at this juncture can be regarded as anything other than harmful.

affected licensees which, in turn, will ensure relocation without significant operational disruption. Although lofty in the stated objectives, EBMUD submits there are simply too

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many questions of far reaching significance left unanswered, and which must be resolved before the Plan can receive any further consideration. They include, but are not limited to, the following:

#### Status of CII Providers

The Plan is silent on the question of whether CII providers are considered public safety licensees for purposes of mandatory relocation. If they are, does it affect the projected cost of relocation; if not, will CII licensees have to bear such costs?

#### Cost of Relocation

There are deep divisions among the commenters on the matter of cost, with some projections reaching as high as \$5 billion. While the big number is important, EBMUD's greater concern is on its direct cost, and how the overall number (whatever it is) translates into direct cost for EBMUD.<sup>5</sup>

#### The Proposal Does Not Obviate the Need for Further Proceedings

By their own admission, the joint parties acknowledge that adoption of the Plan will require revisions and codification of rules.<sup>6</sup> We agree, and cite this as an additional reason for the Commission to “get it right once and for all”, and avoid piecemeal approaches that portend to be both unnecessary and unnecessarily expensive.

#### No Guarantee Parties Can Retune Facilities

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<sup>5</sup> The District has not conducted its own cost analysis, however, gauging by numbers provided by licensees with fewer facilities, EBMUD's cost could exceed the total budget its Board earlier approved for its now delayed system upgrade.

There is no empirical evidence that all parties will be able to retune facilities to another frequency or to operate in the designated (replacement) spectrum.

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Mandatory Relocation for Non-offending Parties Is Unfair

What is the logic of requiring non-offending parties -- particularly those such as EBMUD who are statutorily created entities -- to incur the cost and disruption associated with relocating facilities that have a direct bearing on the safety of life and property, and which will not permanently solve a problem?<sup>7</sup> The record is silent on this matter, but assuredly should be answered before any further action is taken.

Conclusion

EBMUD believes the proffer contained in the “Consensus” (Compromise) Plan cannot proceed until the foregoing items are addressed and satisfactorily resolved.

WHEREFORE, the premises considered, the District requests the Commission fully consider its concerns and opposition as hereinbefore set out.

Respectfully submitted,

EAST BAY MUNICIPAL UTILITY DIST.

By: \_\_\_\_\_/s/\_\_\_\_\_

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<sup>6</sup> Compromise Plan at 22.

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<sup>7</sup> Some parties have suggested the matter may be violative of the Act as well as constitutionally protected property rights. *E.g.*, Carolina Power and Light Company and TXU at 11 (cites omitted).